IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 554 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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GAJIBEN WD/O THAKOR MAFAJI JUGAJI & 4 - Appellant(s)
Versus
DEEPAKAM PRODUCTS & 1 - Defendant(s)

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Appearance :
MR PRAKASH K JANI for Appellant(s) : 1 - 5.
MR JR NANAVATI for Defendant(s) : 1,
MR SHALIN N MEHTA for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 25/08/2006

ORAL JUDGMENT

1.0 By way of this appeal, the appellants have challenged the judgment and award of the learned Commissioner for Workmen's Compensation and Civil Judge(S.D.), Mehsana (for short, 'The Authority') passed in W.C.C. No.11 of 1987 dated 9th July, 1990 whereby the Authority dismissed the said application.

2.0 The present appellants are the heirs and legal representatives of the deceased-Jugaji.

According to them on 24.04.1986, when the deceased, on instructions from opponent No.1 was cleaning a tanker No. G.T.F. 5962, he accidentally came into contact with a live electric wire. On account of the said accident, deceased received serious burn injuries and expired. Therefore, the present appellants made an application before the Authority claiming an amount of Rs.1,00,000/- by way of compensation.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard learned Counsel for the parties. It was the case of the appellants before the Authority that, since the deceased had lost his life while discharging his duty in the employment of the opponent No.1 i.e. cleaning of tanker, they are entitled for compensation. It may be noted that Gajiben widow of the deceased has

narrated two different stories in her evidence. Firstly, in her cross-examination she stated that her husband was working on the truck. But, later on she changed her word and stated that her husband was working in the factory. It may also be noted that she has not produced any documentary evidence in support of her case. However, the Tribunal did not believe her story. On the contrary, one witness-Babuji, who was working with the deceased, has stated in his cross-examination that he was doing the job of unloading the truck or tanker containing silicate material or chemical for Deepkham Industry as well as Vikram Industries and as soon as truck or tanker was unloaded his duty was finished. Talaji- brother of the deceased, in his cross-examination, has also stated that if no truck or tanker come, they have not to perform their duty. Babuji has further stated that on the day of incident, he along with the deceased went to clean the truck on request made by the conductor of the said tanker. Therefore, from the evidence

of Babuji and Talaji it clearly transpires that the deceased was not working with the opponent No.1 on either permanent or daily wage basis. On the contrary, from the evidence of Babuji it clearly transpires that the deceased was a casual labour and was doing the work of unloading a truck or tanker as and when available. Hence, the Tribunal is justified in holding that since the appellants have failed to prove 'master and servant' relationship between the deceased and opponent No.1, they are not entitled for compensation.

3.1 I am, therefore, in complete agreement with the reasoning given and the findings arrived at by the Tribunal, and hence, find no reason to interfere in this appeal.

4.0 In the result, the appeal stands dismissed. No order as to costs.

(K.S. Jhaveri,J.)

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